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INTER-PROVINCIAL BARRIERS TO LABOUR MOBILITY IN CANADA: POLICY, KNOWLEDGE GAPS AND RESEARCH ISSUES*

Patrick Grady, Global Economics Ltd.
Kathleen Macmillan, International Trade Policy Consultants Inc.

Working Paper 2007-10

Canada

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Abstract

The purpose of this paper is to identify the most important knowledge gaps on interprovincial barriers to labour mobility in Canada, and to shed some light on potential conceptual, methodological, and data issues associated with research in this area. Consequently, it provides an overview of the current state of play with respect to the most important issues relating to inter-provincial barriers to labour mobility within the Canadian internal market. The three main barriers to labour mobility in Canada, which are considered, are: residency requirements; certain practices regarding occupational licensing, certification and registration; and differences in how occupational qualifications are recognized. These are the main regulatory barriers that are to be removed or reduced under Chapter 7, the Labour Mobility Chapter of the Agreement on Internal Trade (AIT). It also reviews critically the recent relevant research in Canada and in some other jurisdictions (the United States, the European Union and Australia) on barriers to labour mobility. The paper finds that the most important knowledge gap concerns the extent of the regulatory barriers to labour mobility and their impacts and costs. It also concludes that there is nothing fundamentally wrong with the approach of mutual recognition being pursued in Canada to eliminate such regulatory barriers. However, while there has been a fair degree of success in Canada in achieving occupation-specific Mutual Recognition Agreements for occupational qualifications and reconciliation of differences in occupational standards, this progress has been too slow. Moreover, the functioning of the dispute resolution mechanism with respect to Chapter 7, is overly complex and inaccessible. The dispute resolution mechanism in the Alberta-B.C. Trade, Investment and Labour Mobility Agreement is stronger and simpler than that of the AIT, and definitely one to be considered as a model to improve the AIT.

Key words: labour, labour mobility, internal markets, internal trade

Résumé

Cette étude a pour objectif de cerner les principales lacunes en matière d'information sur les obstacles interprovinciaux à la mobilité de la main-d'oeuvre au Canada et d'éclaircir les questions éventuelles de concept, de méthodologie et de données liées à la recherche dans ce domaine. Par conséquent, elle donne un aperçu de la situation actuelle pour ce qui est des plus importantes questions relatives aux obstacles interprovinciaux à la mobilité de la main-d'oeuvre à l'intérieur du marché canadien. Les trois principaux obstacles à l'étude sont : les exigences en matière de résidence; certaines pratiques concernant l'autorisation d'exercer, la reconnaissance professionnelle et l'immatriculation des travailleurs; les différences dans la reconnaissance des qualifications professionnelles. Il s'agit là des plus importants obstacles réglementaires qui devront être supprimés ou atténués dans le cadre du chapitre 7 (Mobilité de la main-d'oeuvre) de l'Accord sur le commerce intérieur (ACI). L'étude fait également une recension des plus récentes recherches effectuées dans ce domaine au Canada et ailleurs (États-Unis, Union européenne et Australie). Selon elle, l'étendue des obstacles réglementaires à la mobilité de la main-d'oeuvre, ainsi que leurs effets et leurs coûts, constituent les éléments où le manque d'information est le plus important. Toujours selon l'étude, la politique de reconnaissance mutuelle que vise le Canada en vue de supprimer de tels obstacles réglementaires n'a rien de

fondamentalement déraisonnable. Toutefois, bien que l'on ait enregistré d'assez bons résultats au Canada en matière de conclusion d'accords de reconnaissance mutuelle pour les qualifications professionnelles et l'abolition des différences sur le plan des normes professionnelles, il a fallu trop de temps pour en arriver là. En outre, le mécanisme de règlement des différends dans le cadre du chapitre 7 de l'ACI s'avère trop complexe et inaccessible. Par rapport à ce mécanisme, celui de l'entente sur le commerce, l'investissement et la mobilité de la main-d'oeuvre qu'ont conclue l'Alberta et la Colombie-Britannique est plus simple et plus contraignant. Il constitue incontestablement un modèle à considérer en vue d'améliorer l'ACI.

Mots-clés : main-d'oeuvre, mobilité de la main-d'oeuvre, marchés intérieurs, commerce intérieur

INTRODUCTION

Ten years after the implementation of the Agreement on Internal Trade (AIT), in 1994, there was growing disappointment among those in government and business with the slow progress that was being made in removing barriers to trade, investment and labour mobility. Concerned to reenergize the process, the Council of the Federation reaffirmed their governments' commitment to promoting internal trade in 2004 and established an ambitious workplan for trade, labour and other ministries.

Last April the governments of British Columbia and Alberta concluded a Trade, Investment, and Labour Mobility Agreement (TILMA) that represented a fundamentally different approach that went well beyond the AIT. It raised further questions about the need for governments to take steps to improve the AIT.

Last October Premier Doer of Manitoba reported back to the Council of the Federation on an action plan reached at the September meeting of the Committee on Internal Trade. An important part of that plan is a strategy to improve labour mobility developed by the Forum of Labour Market Ministers (FLMM) in response to direction from the Council of the Federation. Its objective is to enable Canadians to work anywhere in Canada without restrictions by April 1, 2009. The achievement of this ambitious objective will require the full compliance by all provincial professional and occupational regulatory bodies.

In addition, the Senate Committee on Banking, Trade and Commerce has been holding hearings on internal trade. The members have been pushing witnesses hard for information on the costs of barriers and on the benefits in terms of increased productivity and competitiveness to be derived by removing them. The Senate Committee's report when it becomes available later this year should further highlight the importance of removing interprovincial barriers, including those to labour mobility.

The pursuit of a more ambitious policy agenda to remove barriers to internal trade would be facilitated by a research program on the economic impact of these barriers. Consequently, Industry Canada and Human Resources and Skills Development Canada have convoked a roundtable to prepare a new comprehensive research program on the economic costs of internal trade and labour mobility restrictions. The plan is to have the resulting draft research papers prepared in time for a major conference on the subject to be held next year.

This purpose of this paper is to provide useful background material for the roundtable participants on the policy and research issues and to offer some possible research proposals to help kick off the discussions of research priorities. Consequently, it provides an overview of the current state of play with respect to the most important issues relating to inter-provincial barriers to labour mobility within the Canadian internal market. It also reviews critically the recent relevant research in Canada and in some other jurisdictions on barriers to labour mobility. Its

purpose is to identify the most important knowledge gaps, and to shed some light on potential conceptual, methodological, and data issues.

The three main barriers to labour mobility in Canada, which are considered, are: residency requirements; certain practices regarding occupational licensing, certification and registration; and differences in how occupational qualifications are recognized. These are the main regulatory barriers that are to be removed or reduced under Chapter 7, the Labour Mobility Chapter of the Agreement on Internal Trade (AIT).

More specifically, this paper contains sections in which we:

- summarize the economic impact of barriers to labour mobility in theory;
- review the trends in net interprovincial migration;
- discuss the objective of professional and occupational regulation;
- profile the regulated professions and occupations;
- summarize and assess the AIT approach to eliminating interprovincial barriers to labour mobility;
- assess the results of the 2004/05 survey of labour mobility in Canada;
- examine the functioning of the dispute settlement mechanism under Chapter 7 and the disputes that have arisen and their status;
- review the current state of play regarding labour mobility under the AIT;
- consider the alternative approaches to labour mobility pursued in TILMA and its advantages and disadvantages in comparison to the AIT;
- present the recent Ontario-Quebec Agreement on Construction and its implications for labour mobility;
- review the approaches to barriers to labour mobility in the United States, the European Union and Australia;
- compare labour mobility in Canada and other countries;
- survey the research on interprovincial labour mobility and the economic cost of barriers;
- discuss potential conceptual, methodological, and data issues, including an assessment of the potential value of the data sources on interprovincial labour mobility at Statistics Canada;
- outline the key knowledge gaps and recommend research priorities for the future; and
- offer some concluding thoughts on the public policy options for reducing the costs of regulatory barriers to the mobility of labour.

In preparing this paper, we benefitted from the useful input and helpful advice of officials in Human Resources and Skills Development Canada, Industry Canada, the Internal Trade Secretariat, Statistics Canada, and the Internal Trade Representatives and Labour Mobility Coordinators of most provinces and territories.

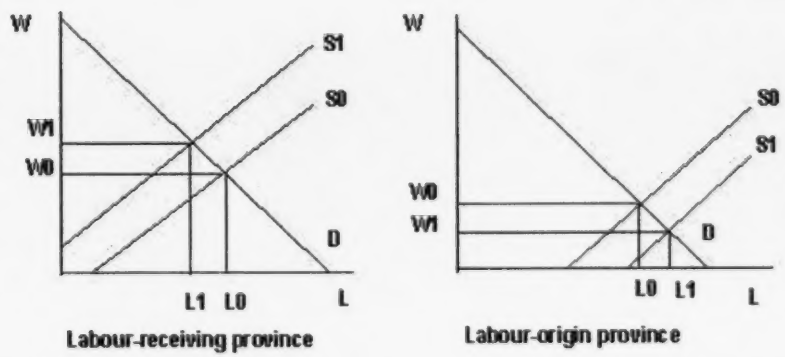
THE ECONOMIC IMPACT OF BARRIERS TO LABOUR MOBILITY

The economic impact of a barrier to interprovincial labour mobility can be better understood using the simple labour supply and demand relationships shown in Chart 1. Without the barrier, the labour supply would be S0 in both the labour-receiving and labour-origin provinces with some labour leaving the labour-origin province to go to the labour-receiving province. The equilibration of supply and demand in both provinces would result in a wage of W0 in both provinces with wage sufficiently higher in the labour-receiving province to attract the labour flow. Employment in both provinces would be L0. If a barrier to labour mobility such as a restrictive licensing regime were imposed, it would restrict the flow of labour from the origin to the receiving province. This would shift back the labour supply in the labour-receiving province to S1 and shift the labour supply out in the labour-origin province to S1. The new equilibrium of supply and demand would be at a wage of W1 with an employment level of L1 in both provinces. The wage would be higher in the labour- receiving province than without the barriers and lower in the labour-origin province. Correspondingly, the employment level would be lower in the labour-receiving province and higher in the labour-origin province.

The workers in the labour-receiving province, who earn higher wages as a result of the barrier, are the prime beneficiaries of the barrier. And the workers in the labour-origin provinces, who earn lower wages, are the main losers. But consumers of the goods and services in the labour-receiving province are also losers and consumers in the labour-origin province gain.

Nevertheless, the overall gains are always less than the benefits because the productivity of the labour in the labour-origin province is always lower, which is the reason they earn lower wages in the first place. Labour mobility promotes the overall economic efficiency in the country and economic welfare. An exception to this might be if the barrier was really necessary to accomplish a particular welfare objective, such as is discussed below. Then it would be necessary also to take into consideration any benefit resulting from the barrier itself.

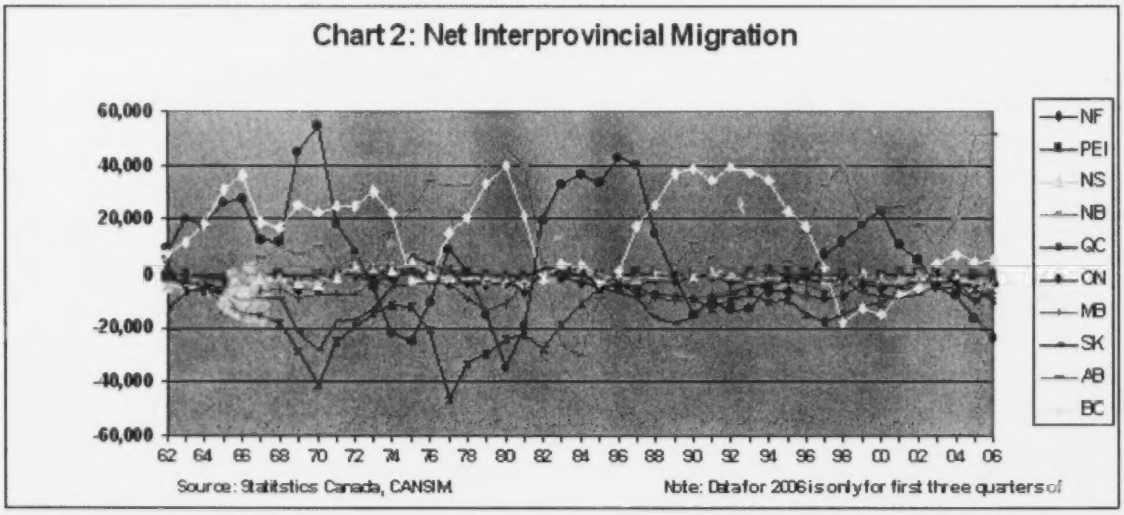
Chart 1: Impact of a Barrier to Interprovincial Labour Mobility



NET INTERPROVINCIAL MIGRATION

The Canadian labour market is very dynamic with large population movements occurring in response to evolving labour market conditions (Chart 2). Net interprovincial migration approached 2 per cent of population in the mid 1960s and has recently averaged near 1 per cent of population. This makes interprovincial labour flows a more important factor in meeting labour demand for most provinces than international immigration. Strong economic growth in one province attracts workers and their families from other provinces where growth prospects are less robust. Workers tend to move from provinces with relatively high unemployment rates and low wage rates to provinces with low unemployment rates and higher wages. The movement of people mirrors the provincial business cycles. But the flows have typically been east to west with Ontario mostly receiving an inflow, but also experiencing an outflow during slowdowns or when other provinces are particularly strong. In 2005 and the first three quarters of 2006 alone net migration to Alberta, driven by the energy boom, was 102,621. On the other hand, there was a net out-migration of 40,637 from Ontario, 21,842 from the Atlantic provinces, and 15,635 from Quebec. This testifies to the very important role that interprovincial labour mobility plays in meeting labour demands in Canada and indicates that barriers are not so great that they prevent the interprovincial flow of labour.

There are three major kinds of barriers to labour mobility: natural such as distance, culture; institutional such as employment insurance, pensions, minimum wages, and health insurance; and language and regulatory such as professional and occupational licensing. The high level of labour mobility in Canada should not be surprising as four fifths of employment is not in regulated professions or occupations where regulatory barriers exist. An examination of the significance of existing regulatory barriers requires a deeper analysis of the regulated professions and occupations.



THE OBJECTIVES OF PROFESSIONAL AND OCCUPATIONAL REGULATION

Before considering the extent of employment in regulated professions and occupations and regulatory barriers to labour mobility, it is useful to review briefly the objectives of these regulations. They are set out in Article 713 of the AIT:

> (a) public security and safety;
> (b) public order;
> (c) protection of human, animal or plant life or health;
> (d) protection of the environment;
> (e) consumer protection;
> (f) protection of the health, well-being and safety of workers;
> (g) affirmative action programs for disadvantaged groups;
> (h) provision of adequate social and health measures to all its regions, and
> (i) labour market development.
>
> For greater certainty, "legitimate objective" includes cost containment in the health sector, such as limiting the number of workers in a given occupation to limit public expenditures.

All of these objectives can be justified to some extent in terms of market failures whether perceived or actual. The important thing is that they are all broadly recognized as "legitimate" by Canadian governments and the public.

From an economic point of view, professional licensing and certification is viewed as a way of dealing with agency problems. When an agent provides services to another person, there can be a divergence of interests that leads the agent not to represent or serve the principal perfectly.

Various market mechanisms have developed to try to make sure that the agent acts in the principal's best interest. These include the licensing or certification of certain professions or occupations. Such licensing or certification is done by government approved bodies and is usually based on the satisfactory completion of a program of education or training or the demonstration of competence through experience or examination. Professional associations are usually involved in the establishment of qualifications and the imposition and enforcement of professional codes of ethics and standards of practice. Where consumers face informational asymmetries in choosing professionals and it is difficult or impossible to assess qualifications, licensing or certification of professionals can help to ensure that quality services are provided and improve consumer welfare. Licensing is much more restrictive than certification as it prevents non-licensed persons from practicing under pain of legal penalties. Certification limits itself to meeting the information needs of consumers and leaves the ultimate choice as to service provider in their hands.

From an economic point of view, professional and occupational regulation has minuses as well as pluses. Oftentimes, regulatory bodies are captured by the professions that they are

established to regulate. And licensing can be used in a self-serving way to restrict entry into the profession and to raise the compensation of those in the field. This is why some economists led by Milton Friedman (1962, pp.137-160) have opposed occupational licensure.

Some of the concern expressed about regulatory barriers to labour mobility stems from opposition to occupational regulation in general. It follows that if regulatory barriers primarily reflect the rent-seeking behaviour of professionals, that the removal of the barriers will improve economic welfare. On the other hand, if the regulatory barriers really reflect legitimate objectives, then their elimination could actually reduce economic welfare.

PROFILE OF THE REGULATED PROFESSIONS AND OCCUPATIONS

In Ontario, there are 39 regulated professions or occupations, which can be broken under the following broad categories :

- Health Care (23): audiologist and speech pathologist, chiropodist, paramedic, chiropractor, dietitian , massage therapist, medical laboratory technologist, medical radiation technologist, midwife, naturopath, nurse, occupational therapist , optician , optometrist, physiotherapist, pharmacist, physician or surgeon, psychologist , respiratory therapist , dental hygienist, dental technologist, dentist, denturist;
- Financial Services (5):Certified General Accountant, Certified Management Accountant , Chartered Accountant; insurance broker, real estate agent;
- Engineering (2): engineer, engineering technician or technologist;
- Legal Services (2): lawyer, paralegal;
- Other (7): forester, funeral director, geoscientist , land surveyor, social worker, teacher, veterinarian.

Although regulated professions and occupations differ from one province to another, an approximation of the number of workers covered can be obtained from the census data (Table 1). The table also does not cover the construction trades, which are subject to more extensive regulation in Quebec. It also does not present numbers for some occupational groups that are too small for reliable estimates. These include: acupuncturists; agrologists; community urban planner; foresters; hearing aid practitioners; home economists; hunting guides; massage therapists; naturopathic physicians; podiatrists; chiropodists; and psychiatric nurses.

There are approximately 1,725,215 workers in the included regulated occupations and professions shown in Table 1. This represents 11.1 per cent of the labour force. The largest groups, which account for three-quarters of the total, are: teachers; nurses; engineers; engineering technicians and technologists; public accountants; physicians; and lawyers. Almost half of those included are in teaching, the health professions or social work, which are in the public sector where resource allocation is not dependent on the market. In these cases, it is more difficult to

apply cost benefit analysis to calculate the costs barriers to labour mobility as the underlying markets do not exist.

There is a perception in Canada that there are substantial regulatory barriers in Canada affecting these professions. A survey published in the *Financial Post* on September 13, 2004 found that barriers to labour and professional mobility caused the most harm to the Canadian economy and standard of living of the nine interprovincial trade barriers specifically mentioned. More than two-thirds of those queried characterized barriers to labour mobility to be very serious or serious on a seven point scale. (COMPASS, 2004, pp.4-5).

Table 1

An Estimate of the Number of Workers in Regulated Professions and Occupations (Excluding Constuction Trades)

	National Occupational Classification	Statistics Canada Classification	Number of Workers	Per cent of Total
Teachers	many	E13	412,950	23.9
Registered Nurses	3152	D112	232,015	13.4
Engineers		C03/C04	179,410	10.4
Accountants (Including CGA, CMA, CA and Public Accountant)	1111	B011	171,305	9.9
Engineering Technicians and Technologists		C13/C14	158,360	9.2
Physicians	3111/3112	D011/D012	65,525	3.8
Lawyers	4112	E012	64,445	3.7
Real Estate Agents	6232	G132	49,670	2.9
Licensed Practical Nurses	3233	D233	47,165	2.7
Social Workers	4152	E022	46,975	2.7
Dental Assistants	3411	D311	24,820	1.4
Pharmacists	3131	D031	23,900	1.4
Medical Laboratory Technologists	3211	D211	18,475	1.1
Dental Specialist	3113	D013	18,105	1.0
Dentists	3113	D013	18,105	1.0
Paramedics	3234	D234	16,170	0.9
Psychologists	4151	E021	16,055	0.9
Physiotherapists	3142	D042	15,760	0.9
Medical Radiation Technicians	3215	D215	14,270	0.8
Dental Hygienists	3222	D222	14,250	0.8
Translators	5125	F025	13,545	0.8
Architects	2151	C051	12,800	0.7
Geoscientists	2113	C013	10,140	0.6
Occupational Therapists	3143	D043	9,585	0.6
Dieticians/ Nutritionists	3132	D032	8,705	0.5
Land Surveyors	2154	C054	8,095	0.5
Veterinarians	3114	D014	7,095	0.4
Respiratory Therapists	3214	D214	6,500	0.4
Audiologists and Speech Pathologists	0311	D041	6,020	0.3
Dental Technicians or Technologists	3223	D223	5,960	0.3
Opticians	3231	D231	5,865	0.3
Chiropractors	3122	D022	5,230	0.3
Midwives	3232	D232	5,170	0.3
Embalmers/ Funeral Directors	6272	G912	4,455	0.3
Optometrists	3121	D021	3,725	0.2
Landscape Architects	2152	C052	2,415	0.1
Denturists	3221	D221	2,180	0.1
TOTAL			1,725,215	100.0

Source: Statistics Canada, 2001 Census.

THE AIT APPROACH TO ELIMINATING INTERPROVINCIAL BARRIERS TO LABOUR MOBILITY

The Charter of Rights and Freedoms recognized for the first time the mobility rights of Canadians. Under it,

> 6(2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right
>
> > (a) to move to and take up residence in any province; and
> > (b) to pursue the gaining of a livelihood in any province.
>
> 6 (3) The rights specified in subsection (2) are subject to
>
> > (a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and
> > (b) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.

However, the above-noted limitations on mobility rights still permitted barriers to labour mobility in the regulated professions and occupations. That is why the federal government and the provincial and territorial governments agreed to be bound by Chapter 7 of the Agreement on Internal Trade. Its purpose is "to enable any worker qualified for an occupation in the territory of a Party to be granted employment occupations in the territory of any other Party as provided in this chapter." (AIT, Article 701, p.89)

Chapter 7 of the AIT requires governments to bring their regulatory practices affecting access to employment opportunities into conformity, above all, with the following three requirements:

- No residency requirements (Article 706);
- Licensing, certification or registration requirements for out-of jurisdiction workers relate principally to competence, and provide treatment no more burdensome than what is imposed on their own workers (Article 707);
- Mutual recognition of occupational qualifications and reconciliation of differences in occupational standards (Article 708).

The Agreement stipulates that the Parties will assess their occupational regulations to determine where commonality exists and will take then take steps to reconcile or accommodate the differences. (Annex 708). It has been found convenient to codify the assessments and reconciliation in occupation-specific Mutual Recognition Agreements (MRAs).

MRAs are not required by the Agreement but they can greatly simplify its application. By codifying differences and defining processes to resolve disputes over labour mobility between regulatory bodies, rather than between the parent governments that are the parties to the AIT

itself, they also make dispute resolution less government-dominated and sometimes more flexible and accessible.

In February 1999, as part of the Social Union Framework Agreement, First Ministers (except for Quebec) agreed that the deadline for the full implementation of Chapter 7 of the AIT was July 1, 2001. All the assessments and reconciliations of regulatory differences were supposed to be completed by that date, but several occupations failed to meet the deadline for completing MRAs and agreements continue to be negotiated.

There has been significant progress in improving labour mobility since the AIT has come into effect . Non-conforming elements such as licensing and residency requirements have been eliminated as a condition of employment. According to the Labour Market Coordinating Group (LMCG), as of January 2007, 30 of 50 occupations regulated in more than one jurisdiction have MRAs covering most regulating jurisdictions, 16 have MRAs that have been signed by all regulating jurisdictions, and only 4 do not yet have MRAs (Table 2). With a little more effort, it should be possible to bring almost all regulated occupations under MRAs.

Foreign-trained workers now have the same right to have their credentials recognized in other jurisdictions as those trained in Canada after their qualifications are initially recognized.

The LMCG has developed a detailed set of *Guidelines* (2003) for the Forum of Labour Market Ministers (FLMM) that are being used to ensure that regulatory bodies come into compliance with their obligations under Chapter 7.

The FLMM has also the Work Destinations Website which provides much information on regulated trades and professions in Canada. This includes information on entry requirements, for professional or trades people moving within Canada and for immigrants. While it is useful, it does not contain all the information required by workers changing jurisdictions. And it does not contain all the information available in existing MRAs.

RESULTS OF THE 2004/05 SURVEY OF LABOUR MOBILITY IN CANADA

In the winter of 2004/05, the LMCG carried out a survey for the FLMM of provincial and territorial regulatory authorities on compliance with the AIT and MRAs (FLMM, 2004). Out of 425 regulatory bodies surveyed, 392 responded.

The total number of applicants received by these regulatory bodies over the year ending September 30, 2004 was 12,953. Of these, 8,386 or 65 per cent were granted licensure, registration or certification and 4,567 or 35 per cent were refused (FLMM, 2005,p.12). It is worth noting that the total number of applicants only represented less than 5 per cent of total interprovincial migrants during the period. And those refused only represented 1.7 per cent of interprovincial migrants or less than 0.03 per cent of the labour force. Even if it was assumed that an equal number did not apply because of the expectation of rejection, the number affected would still be very small.

Of the total number of applicants received, 1,590 were foreign trained. Of these, 815 or 51 per cent were granted licensure, registration or certification (FLMM, 2005,p.13).

The survey concluded that there was a high level of recognition in 8 of the 50 occupations surveyed that registered approval rates of 86 to 100 per cent. 23 occupations reported registration rates of 59 to 85 per cent, and 18 occupations reported low registration rates of 4 to 50 per cent. In the occupations with low rates, there were unusually high volumes of occupants in two occupations and most applicants had not been licensed under the terms of a MRA (FLMM, 2005,p.3).

Table 2
Status of Mutual Recognition Agreements as of January 2007

Occupations	All signed	One or two have not signed	No MRA
Acupuncturists	All		
Agrologists		Most	
Architects		Most	
Audiologists & Speech Pathologists		Most	
Certified General Accountants	All		
Certified Management Accountants		Most	
Chartered Accountants		Most	
Chiropractors		Most	
Community Urban Planner			X
Dental Assistants	All		
Dental Hygienists		Most	
Dental Specialist		Most	
Dental Technicians/Technologists		Most	
Dentists		Most	
Denturists		Most	
Dieticians/Nutritionists		Most	
Embalmers/Funeral Directors		Most	
Engineering Technicians and Technologists	All		
Engineers		Most	
Foresters	All		
Geoscientists	All		
Hearing Aid Practitioners	All		
Home Economists	All		
Hunting Guides			X
Land Surveyors		Most	
Landscape Architects		Most	
Lawyers		Most	
Licensed Practical Nurses		Most	
Massage Therapist	All		
Medical Laboratory Technologists		Most	
Medical Radiation Technicians	All		
Midwives		Most	
Naturopathic Physicians	All		
Occupational Therapists	All		
Opticians		Most	
Optometrists		Most	
Paramedics		Most	
Pharmacists		Most	
Physicians		Most	
Physiotherapists		Most	
Podiatrists/Chiropodists			X
Psychiatric Nurses	All		
Psychologists	All		
Real Estate Agents		Most	
Registered Nurses		Most	
Respiratory Therapists	All		
Social Workers			X
Teachers		Most	
Translators	All		
Veterinarians		Most	
Total (50 occupations)	**16**	**30**	**4**

Notes: Yukon and Nunavut did not take part in 2004/05 Survey

Public Accountants were not surveyed - No MRA in database

The survey revealed that 76 per cent of regulators have compared their competency profiles and occupational standards with other provinces as required under Section 708 of Chapter 7 and that 71 per cent have found a high degree of commonality (FLMM, 2005, p.6). It also showed that 12 per cent of regulators had not yet signed a MRA or similar protocol with other jurisdictions and 6 per cent had not even developed one (FLMM, 2005, p.9).

In conclusion, this survey provides some very useful information and should be done annually as part of a monitoring and evaluation framework for the AIT. That way it would be possible to standardize the definitions used and treatment of responses in order to get more meaningful results. A time series would also be helpful in tracking progress. There are questions about the exact meaning of registration rates (and their converse refusal rates). The survey correctly stresses the need for follow-up questions to explore the reason why workers are not being registered when they change jurisdictions. It is not clear if the refusals are justified or not. It would also be helpful to have some tracking over time to see if refusals really just mean delay and not final rejection.

THE FUNCTIONING OF THE AIT DISPUTE SETTLEMENT MECHANISM

Following the GATT and WTO Agreement, disputes under Chapter 7 of the AIT are treated as bilateral disagreements over obligations under the Agreement. Consequently, they are supposed to be resolved through consultation between the governments who signed the agreement. Only as a last resort, if consultations fail, is a panel of independent experts to be selected by the parties to recommend a resolution to the disputants..

A party, meaning one of the governments involved, initiates a complaint under the AIT by requesting consultations with the respondent party on a practice that it alleges contravenes the respondent's obligations under Chapter 7 of the AIT and impairs the AIT's benefits to the complainant. The complaint may be made on the party's own behalf or on behalf of a person it represents.

If bilateral consultations do not resolve the matter within 30 days or an agreed timeframe, the complaining party may seek the assistance of the FLMM in resolving the matter. The FLMM may offer mediation or consultation, or advice and recommendations based on a set of procedures it approved for handling disputes.

If the FLMM's assistance fails to resolve the matter, the complainant may seek resolution under the general dispute settlement procedures of the Agreement set out in Chapter 17. This also involves an initial bilateral consultation phase which, if unsuccessful, leads to a request to the Committee on Internal Trade to establish a panel of independent persons chosen from a standing roster, generally to determine whether the measure at issue is inconsistent with the Agreement.

Once the panel issues its report, its recommendations are supposed to be implemented by the parties to the dispute. If the respondent does not implement the panel's findings, the

complainant may withdraw benefits of the Agreement that accrue to the respondent. But this has never been done and is not a very credible penalty.

Despite being the "people" chapter of the AIT, Chapter 7 does not provide for direct access by workers to its dispute settlement procedure. However, there is an alternative path to resolve disputes arising under Chapter 7, which is available to persons. It is to make use of the general dispute settlement procedure under Chapter 17.

Under Chapter 17, a complaint by a person must first be presented to an independent screener appointed by the person's home government. If the case is approved by the screener, then the complaining person can pursue it with the support of its government. This involves entering into consultations with the respondent party, and ultimately, if unsuccessful, requesting the establishment of a panel whose findings are supposed to be binding on the parties.

There have been 22 disputes under Chapter 7 since the AIT came into effect on July 1, 1995 (Table 3). These cases have involved: paramedics; hairstylists; practical nurses; hunting guides; denturists; public accountants; construction workers; opticians; dental assistants; embalmers; and emergency medical technicians. Of the cases, 7 have been satisfactorily resolved, 2 upheld, 1 denied, 2 withdrawn, 5 inactive, 4 active, and 1 not subject to the AIT. This is not a very large number of disputes. It is also noteworthy that only around a third have been successfully resolved. On the other hand, there have reportedly been a much larger number of complaints that have been handled informally and never result in formal complaints.

The most interesting cases are the two that actually went to a panel and were upheld. These involved complaints by the Certified General Accountants Association of Manitoba against Ontario and the Certified General Accountants Association of New Brunswick against Quebec regarding restrictions preventing their members from auditing public companies. The Certified General Accountants Association of Canada has thoroughly documented their experience and frustrations in pursuing these complaints (2004, 2005, 2006).

In December 1999 the Certified General Accountants Association of Manitoba initiated a complaint against Ontario. The complaint took a long time to work its way through the various stages – screener, consultations, panel. Finally, over a year and a half later in October 2001 a panel found that Ontario's public accounting licensing system was inconsistent with AIT. But then nothing happened for quite a while. It was almost three years later when Ontario passed the Public Accounting Act, 2004. This act, which was not implemented until November 2005, established a Public Accounting Board that should eliminate restrictions on access to public accounting for CGAs.

The complaint of the Certified General Accountants Association of New Brunswick against Quebec has also moved slowly. It was initiated in March 2004. In August 2005 a panel found that Quebec's measures restricting public accounting to CAs was inconsistent with the AIT. Quebec is reportedly still discussing how to resolve the issue with the three provincial accounting bodies.

In its study of the AIT dispute resolution system, the Certified General Accountants Association of Canada has complained that the "system was not working as it should and is in urgent need of improvement" (2006, p.4). Its most fundamental criticisms are that:

1. The AIT is difficult to interpret and to access and the dispute resolution process is so expensive to apply both in terms of time and money.
2. Governments are supposed to resolve disputes cooperatively through consultations but these consultations are often expensive and delay the resolution of disputes and are not accessible to people affected by the trade restrictions.
3. There is no certainty that governments will implement panel findings and there is no mechanism in the AIT to ensure that they do.

The Certified General Accountants Association of Canada has also made a number of specific recommendations for improving the process that merit consideration.

Table 3
Status of Disputes under AIT Chapter 7 on Labour Mobility

File Number	Originating Date	Issue	Complainant	Respondent	Stage	Disposition*	Disposition Date	Type of Complaint**
05106-7 NL	Oct-05	Paramedic Licensing	NL	AB	Ch 7 Consults	Active	NA	G-G(P)
05106-7 FED	Apr-05	Federal Hiring Practices	AB, BC	CA	CH 7 Consults	Active	NA	G-G
04105-7 MB	Nov-04	Hairstylist Licensing	MB	NS	Ch 7 Consults	Active	NA	G-G(P)
04105-7 LPN	Sep-04	Practical Nurse Licensing	NL	ON	CH 7 Consults	Active	NA	G-G(P)
03104-7 HUN	Nov-03	Hunting Guide licensing	NB	NL	CH 7 Consults	Resolved	Jan-05	G-G(P)
03104-7 DEN	Apr-03	Denturist Licensing	QC	ON	CH 7 Consults	Resolved	Jun-03	G-G(P)
02103-7 CGA	Jul~02	Public Accounting	CGA Association of NB	QC	Panel	Upheld	Aug-05	P-G
01102-7 ADAT	Feb-02	Construction Worker Mobility	Canada [ADAT]	QC, ON	1711(1) request	Inactive	NA	G-G(P)
99100-7 KEN	Mar-00	Hunting Guide Licensing	NS	NL	Ch 7 Consults	Resolved	Jan-05	G-G(P)
99100-7 KEN	Mar-00	Hunting Guide Licensing	NS	NB	Ch 7 Consults	Resolved	Jun-03	G-G(P)
99/00-7 CGA	Dec-99	Public Accounting	CGA Association of MB	ON	Panel	Upheld	Oct-03	P-G
98/99-7 COL	Jan-99	Opticians Registration Criteria	AB	BC	Ch 7 Consults	Inactive	NA	G-G(P)
98/99-7 CGA	May-98	Public Accounting	SK Professional Association	ON	Ch 7 Consults	Inactive	NA	G-G(P)
96/97-7 NL	Feb-97	Denturists Licensing	NS	NL	Ch 7 Assistance	Resolved	Sep-98	G-G(P)
96/97-7 BUL	Sep-96	Dental Assistant licensing	AB	MB	Ch 7 Assistance	Inactive	NA	G-G(P)
96/97-7 GIM	Jul-96	Medical Services Residency Requirements	AB	SK	Screener	Denied	Nov-96	P-G
96/97-7	May-96	Embalmer Licensing	AB	SK	Ch 7 Consults	Withdrawn	May-96	G-G(P)
95/96-7 ONT	Mar-96	Insured Medical Services Restrictions	AB	ON	Ch 7 Consults	Withdrawn	Apr-96	G-G(P)
95/96-7 AB	Oct-95	Municipal Fee Differentials	BC	AB	Ch 7 Consults	Not Subj. to	Oct-95	G-G
95/96-7 TAY	Sep-95	Chartered Accountant Licensing	ON	SK	1711(1)	Inactive	NA	G-G(P)
95/96-7 ONT	Sep-95	Emergency Medical Technicians Licensing	AB	ON	Ch 7 Consults	Resolved	Mar-97	G-G(P)
95/96-7 VAN	Jul-95	Residency Requirements	AB	BC	Ch 7 Consults	Resolved	Jul-95	G-G

Definitions of Disposition	
Upheld	A Chapter 17 dispute panel found in favour of the complainant.
Denied	A Chapter 17 dispute panel found against the complainant or a Chapter 17 screener denied the complainant's request to proceed with a dispute under Chapter 17
Resolved	The disputants reached a mutually satisfactory resolution of the complaint at any stage in the dispute resolution process.
Not subject to	A screener decided that the complaint does not fall within the scope of the AIT or the disputants have mutually agreed that the complaint does not fall within the scope of the AIT.
Withdrawn	The complainant withdrew the complaint.
Active	The disputants are actively pursuing the resolution of the complaint.
Inactive	The disputants are not actively pursuing the resolution of the complaint.

Type of Complaint	
G-G	Government to Government
P-G	Person to Government
G-G(P)	Government to Government on behalf of a Person

Source: Agreement on Internal Trade, November 2006. http://www.ait-aci.ca/index_en/dispute.htm

THE CURRENT STATE OF PLAY REGARDING LABOUR MOBILITY UNDER THE AIT

When the Council of the Federation was created by provincial and territorial premiers in December 2003, one of the two priorities it set out to achieve was: "strengthening the economic union, including enhancing internal trade, improving labour mobility, and harmonizing and streamlining regulation." The work program it established and the high priority it attached to this objective have resulted in a renewed effort to make the AIT work and to reduce interprovincial barriers. The first workplan was presented at the COF's meeting in February 2004. A progress report was prepared in January 2006 (Council of Federation, 2006).

Over the course of 2006, the Trade, Investment, and Labour Mobility Agreement between British Columbia and Alberta and the Ontario-Quebec Agreement on Construction provided concrete examples of progress in removing interprovincial barriers and created further interest in improving the AIT.

The lead jurisdiction for labour mobility issues was Ontario. The progress report noted that the FLMM had prepared an assessment of Chapter 7 of the AIT, including conducting a survey of regulatory bodies, and has concluded that "further efforts are necessary to secure greater cooperation by regulatory bodies with the obligations of the AIT. It also revealed that, after considering the assessment at their June 2005 meeting, the Committee on Internal Trade stressed the importance of addressing the issues of foreign credentials recognition and interprovincial labour mobility. Ontario consequently contacted the FLMM and requested that it prepare an action plan with specific targets and timelines.

On behalf of the COF, Premier Gary Doer of Manitoba attended the September 7, 2006 meeting of the CIT. With respect to labour mobility, he reported in a letter (Council of Federation, 2006b) to Premier Danny Williams of Newfoundland, the chair of the COF, that ministers had "agreed to establish a new deadline of April 1, 2009 for all existing regulated occupations to establish compliance with the labour mobility provisions of the Agreement on Internal Trade." This is intended to allow Canadians "to work anywhere in Canada without restrictions" and to build on "a process of mutual recognition among provinces and territories for professionals with foreign credentials." He also reported that there was agreement that "an effective, fair, efficient, accountable and enforceable administrative dispute mechanism" should be implemented by September 2007. This is very important for resolving disputes over the recognition of occupational credentials. If events unfold as planned, there will definitely be major improvements in the functioning of the AIT with respect to removing barriers to labour mobility.

LABOUR MOBILITY UNDER THE TILMA COMPARED TO THE AIT

The TILMA was established pursuant to Article 1800 (Trade Enhancement Arrangements) of the AIT, which permits further liberalization agreements among the parties. It is much more ambitious than the AIT. The TILMA is based on a principle that the BC and

Alberta governments are resolved to "establish a comprehensive agreement on trade, investment and labour mobility that applies to all sectors of the economy and to "eliminate barriers that restrict or impair trade, investment or labour mobility" (TILMA, Part I), whereas the AIT only commits parties to "not establish new barriers to internal trade" and to "facilitate the cross-boundary movement of persons, goods, services, and investment within Canada" (AIT, Article 101, 3(a)).

The TILMA sets out general rules of "no obstacles" (Article 3) and "non-discrimination" (Article 4). The AIT is made up of specific obligations set out in the agreement. The general rule for the TILMA is that everything is covered by the agreement unless it is specified to be out. For the AIT it is the opposite.

With respect to labour mobility, the TILMA seeks to facilitate movement between British Columbia and Alberta by reciprocal recognition of occupational certifications of workers. The TILMA's ultimate objective is to allow workers who are certified in one province to be recognized as qualified in the other. This means that workers in all regulated occupations would be able to move to the other province and, after registering with the appropriate regulatory authority, practice their occupations without having to undergo "material additional training or examinations." This is interpreted to mean that a jurisprudence exam on provincial regulations that are specific and different in each jurisdiction would be allowed, provided that it was not so substantive as to be "material." An example of an occupation with a different scope of practice in the two jurisdictions that may need some additional training is land agent. In Alberta, land agents are responsible for negotiating oil and gas rights agreements with private landowners, whereas in B.C. the oil and gas is likely to be on crown land. The labour mobility provisions also applies to internationally-trained workers who once certified in one of the jurisdictions would be automatically qualified in the other.

Workers in some occupations, such as the trades covered by the Red Seal program, will be able to take advantage of this benefit immediately, but most workers, who are in the more than 60 occupations listed in the transitional section of the agreement, will have to wait. There is a two-year transitional period specified in the agreement, which ends April 1, 2009. During that time, the two provinces will be working hard to reconcile their regulations as the Premiers are committed to meeting the deadline. However, if agreement is not reached, then the listed occupational-related measures will still be permitted. To a certain extent, this is what already was and is being done under the AIT with even the same deadline.

The list of occupational measures is not even as constraining as it looks. It can even be increased where: "the measure is necessary to achieve a legitimate objective"; "regulates an occupation not regulated by the other Party": or "relates to a difference between the Parties in the permitted scope of the occupation" (TILMA, Section 13. 5).

There is some concern that the political pressure for mutual recognition could lead to a "race to the bottom." However, if one or the other of the provincial governments had serious concerns that this was indeed happening, then mutual recognition could be denied pending agreement on standards.

The dispute resolution mechanism in the TILMA is stronger and simpler than that in the AIT, which is set out in Chapter 17 as well as Chapter 7 of the agreement. TILMA's mechanism is also open to individuals as well as governments with a less cumbersome procedure than that in the AIT involving a screener. And it promises to be more effective because in addition to requiring consultations it offers recourse to binding arbitral panels. If there is any question about the implementation of the panel's final report after the specified reasonable period of time of up to a year has passed, another panel can be convened to determine if there is compliance and to determine monetary awards up to $5 million. This panel's decision can be subject to judicial review and enforcement under the Arbitration Act. In contrast, under the AIT there is no consequence if the governments choose to ignore their obligations and panel findings as happened in the AIT's two public accounting cases.

The TILMA dispute resolution mechanism is definitely a model that should be seriously considered as the CIT considers way to meet its commitment of implementing "an effective, fair, efficient, accountable and enforceable administrative dispute mechanism" by September 2007.

Conference Board of Canada (2005) carried out an impact assessment study of the TILMA for the BC Ministry of Economic Development. While the study discusses the labour mobility sections of the agreement and compares them with the AIT, it does not offer any separate estimate of the impact of the labour mobility provisions of the TILMA. Instead, its estimate focuses on the overall impact of the agreement on British Columbia industries, using a somewhat questionable and highly subjective approach based on a survey of an extremely small sample of ministries and industrial groups.

THE ONTARIO-QUEBEC AGREEMENT ON CONSTRUCTION

Ontario and Quebec have had a longstanding dispute over construction employment. This stems from the highly regulated nature of the Quebec construction sector under the Commission de la construction du Québec and the Régie du bâtiment du Québec. The Quebec construction sector is subject to many complicated rules and restrictions for bidding on contracts and working on projects. Under Quebec law, construction workers must belong to a union and hold the required competency certificate. In addition, there are rules on where in particular a worker can work in the province.

The Quebec regulatory regime for construction made it extremely difficult for Ontario contractors and construction workers to work in Quebec. This caused growing dissatisfaction in the Ontario construction industry, particularly in the regions bordering Quebec. The heated nature of this dispute made it very political. It was consequently pursued outside of the framework of the AIT, which can be interpreted as a statement about the inadequacy of the AIT dispute resolution mechanism.

The most recent round of the dispute was concluded in June 2006 when the Premiers of Ontario and Quebec signed an "Agreement on Labour Mobility and Recognition of

Qualifications, Skills and Work Experience in the Construction Industry." This ended restrictions on Quebec contractors and construction workers imposed under the "Fairness Is A Two-Way Street Act (Construction Labour Mobility), 1999." This act, which Quebec tried unsuccessfully to challenge under the AIT's DSM but which Ontario had refused to allow, had established a Jobs Protection Office. It also had barred Quebec contractors from bidding on more than $100 billion in construction projects funded by the Ontario government and imposed registration requirements on Quebec contractors and workers that were similar to those imposed on Ontario contractors and workers seeking to work in Quebec.

Under the 2006 agreement, Ontario residents will gain better access to construction contracts and jobs in Québec, including some Québec Crown corporation contracts. And Québeckers will no longer have their access to construction contracts and jobs in Ontario restricted. Both provinces' contractors will also be granted reciprocal access to construction contracts of provincial electrical utilities. The agreement provides specific procedures for the mutual recognition of the qualifications, skills, experience and occupational health and safety training of construction workers.

From Ontario's point of view, there are three particular new arrangements that addressed their concerns about Quebec construction industry regulations. The first is the "trade activity card." This would allow an Ontario tradesmen in a voluntary trade to go to Quebec with an Ontario contractor, get a CCQ union card and legally work in a regulated trade. The second is streamlined procedures for Ontario contractors who wish to work in Quebec to get licensed as general or specialized contractors with the Régie du bâtiment du Québec. The third is a "specialized work card." It would permit an Ontario manufacturer of specialized construction goods with warranties like cupboards or windows to bring their trained workers to Quebec to install their products. Ontario Jobs Protection Office continues to function to monitor the agreement and to exercise responsibility for registering Quebec workers and investigating reports of harassment.

Quebec will probably be the biggest beneficiary of the agreement because it was reportedly losing over a couple billion dollars in construction contracts each year in Ontario as a result of the restrictions imposed in the "Fairness Is A Two-Way Street Act." Over ten thousand Quebec construction workers are expected to work in Ontario, whereas only a few hundred Ontario workers are expected to work in Quebec. On the other hand, Ontario will significantly benefit from the opening up of the complicated system of access to Hydro-Québec contracts. This is likely to be especially important with such large projects in the offing as Hydro-Québec's $5-billion Eastmain-1A – Rupert project at James Bay.

A study on the economic impact of the agreement of the Ontario Quebec construction agreement would be interesting.

New Brunswick, which had similar grievances to Ontario, is in the process of trying to negotiate a similar construction agreement with Quebec.

APPROACHES TO BARRIERS TO LABOUR MOBILITY IN OTHER JURISDICTIONS

The United States

There are no specific mobility rights granted by the United States Constitution although the Fifteenth Amendment guarantees due process and the equal protection of the laws in dealing with professional and occupational regulatory bodies.

The U.S system of professional licensing and certification like that in Canada grew out of the common law where guilds managed to establish statutory monopolies for certain trades. Its rationale is to protect public health and safety and to ensure the quality of professional services. The states are the level of government responsible for licensing and certification. As a general rule, they delegate their legal authority to institutions. The exact nature of these institutions differs across states. There are differences in the degree of autonomy, the selection of members, its share of professional and of public or lay members, and standards for disciplinary procedures. The boards can also be self-funded through fees, or be funded directly by the state legislature . Shirley Svorny (1999)

The extent of the professional regulation is if anything even greater than in Canada if the State of California is indicative of the degree of regulation. Its Department of Consumer Affairs, which sets minimum standards for competence education and skills in such areas as healthcare, cosmetology, contracting and automobile repair, is a bureaucratic giant made up of more than 40 boards, bureaus and other agencies that regulates more than 2.4 million professionals in 255 occupations. (Department of Consumer Affairs in California, 2005, p.4)

Professionals moving from one state to another have to obtain a new state license or certification. This is facilitated by reciprocity agreements under which board in two or more states agree to grant a license to a anyone already licensed in the other. This means that it accepts the license of the other state as a valid basis for licensure, and dispenses with licensing exams and other conditions of entry. It is, in effect, another name for a Mutual Recognition Agreement as in Canada. But as in Canada licensing boards can still put impediments in the way of full reciprocity. The ease of securing a license thus can depend very much on the particular profession and the particular jurisdiction (See Stanley J, Gross,1986 for survey of studies of the effect of professional licensing arrangements on labour mobility). An area where there is very good mobility is for health practitioners where there has been to move from state-specific to standardized exams (Shirley Svorny, 1999, p.313) .

In the United States, there is nothing like the Agreement on Internal Trade and the related institutions governing relations among the states on professional licensing. The closest thing is Council of State Governments, which is an organization of the state governments that advocates "multi-state problem solving and partnerships." From time to time, it carries out studies that touch on issues related to professional licensing and labour mobility such as its recent study on teachers. It also annually puts out *Suggested State Legislation* which allows states to benefit from legislation in other states, including professional licensing legislation. But at the same time,

it stresses that it is not seeking to influence the "enactment of state legislation."

While the situation obviously depends on the particular profession or occupation and state or province, the system of professional licensing in the United States does not, at first glance, appear to involve smaller barriers to labour mobility than that in Canada. Since this seems to fly in the face of the conventional wisdom, perhaps a more detailed comparison of the extent of the barriers under the two systems is in order.

The European Union

Free movement of persons is a fundamental freedom under law in the European Union and an essential element of European citizenship. Under Article 39 EC and Regulation 1612/68 on freedom of movement of workers within the Community, nationals of EU Member States have the right to work in other Member States.

The European Court of Justice has interpreted Article 39 to mean that migrants must be treated the same as nationals in terms of their access to employment, working conditions, and tax and social advantages. However, according to Article 39 (4) free movement of workers does not apply to the public sector. While this derogation has been strictly interpreted by the Court of Justice, Member States can restrict public sector posts to their nationals "if they involve the exercise of public authority and the responsibility for safeguarding the general interests of the state." Consequently, nationality and language requirements are permissible in certain circumstances. However, posts involving administrative tasks, technical consultation and maintenance can not be restricted to nationals of the host Member States. But those wishing to work in the public sector may also encounter difficulties with respect to the recognition of professional credentials and experience and seniority acquired in another Member State and with recruitment procedures. Nevertheless, following the Court of Justice's case law, previous periods of employment in another Member State must be taken into account into determining salary and seniority (European Public Administration Network, 2006). The public sector is an area where there is much greater labour mobility in Canada than in the European Union.

The EU has a system in place to assist the movement of people in specific professions or occupations who must have their diplomas and professional qualifications recognized to practise (European Union, 2007). Sectoral Directives providing for the automatic recognition of diplomas have been adopted for some professions such as architects, midwives, pharmacists, doctors, nurses, dentists and veterinary surgeons. For other regulated professions, professional qualifications are recognized in accordance with two general Directives (89/48/EEC and 92/51/EEC), as amended by Directive 2001/19/EC.

The General System provides for the recognition of professional qualifications. Its purpose is to allow individuals with professional qualifications from one Member State to practice their profession in another Member State where the profession is regulated.

For professions, including those where individuals carry out a commercial or craft activity

or provide a service covered by Directive 1999/42/EC, as well as lawyers, teachers, chartered accountants, physiotherapists, the rules are straightforward. If the profession is not regulated in the State of provenance, the competent professional authority may require that the applicant have two years' professional experience. On the other hand, if the individual's qualification relate to regulated training, this professional experience will not be required.

The General system for professional recognition considers certificates, diplomas, titles or qualifications based on completing specific vocational training. As a general rule, diplomas, certificates or other qualifications are recognized at face value.

Diplomas are not automatically recognized at the European level. Individuals must apply for recognition from the competent authority in the host country. That authority will examine the case individually to make sure: that the regulated profession is the same as that for which the individual is fully qualified; and that the duration and content of the training does not differ substantially. If the professions are the same, and the training similar, the competent authority must recognize the individual's qualifications. And as long as these conditions are satisfied, even if there are differences between the professions or in the duration or content of the training, the individual's application can not be rejected outright, but the individual can be required to take compensatory measures. Only in an extreme case can the authority refuse an application.

There is a four-month deadline for the competent authority to process an application and make a decision. If the application is rejected or compensatory measures are required, the individual is eligible to appeal to the national authorities. The European Court of Justice can be asked to determine if a State is in breach of its obligations, as a result of incorrectly applying Community law or having incompatible national legislation. But the national authorities still have the responsibility to amend individual decisions to comply with Community law.

There are several compensatory measures that may be required by competent national authorities. One is the acquisition of additional professional experience of between one and four years if there is a difference of at least one year in the duration of training. Another is a period of adaptation or aptitude test if there are substantial differences between the professions or in the content of the training.

There are special procedures for craft and commercial professions and for the services covered by Directive 1999/42/EC. Member States must accept previous exercise of the activity for a specified period of time in another Member State as evidence of the required knowledge and aptitude. Individuals who do not meet these conditions may apply for recognition of their diplomas, certificates and other qualifications in accordance with the General System.

There is also a system of automatic recognition based on diplomas from Member States for certain professions.

There are seven regulated professions that are covered by sectoral Directives: doctors (general practitioner or specialist); general nurses; midwives; veterinary surgeons; dental surgeons; pharmacists; and architects.

If training or education for professions or occupations is obtained outside of the European Union, there is more discretion involved in approving qualification. A Member State can recognize the qualification based on certain agreed criteria provided that the Community minimum training requirements have been met. There is a similar deadline for decision and appeal procedure. Again the European Court of Justice can only make decisions on whether a State is in breach of its obligations in applying Community law and the specific decisions on qualifications must be made by competent national authorities.

The European Union's system for recognizing professional qualifications is, like Canada's, based on Mutual Recognition. Also individuals are required to satisfy the requirements of individual jurisdictions and there is no binding EU-wide dispute settlement mechanisms that is available to individuals. It thus does not appear to allow a greater degree of labour mobility for regulated professions and occupations than in Canada.

In fact, the European Foundation for the Improvement of Living and Working Conditions (2005, p.11) cites research showing that "geographic mobility is not a very widespread phenomena in Europe and mobility between various EU Member States is of a (very) limited nature." It attributes this to "a number of factors: there are clear institutional and legal differences between Member States; moreover, the decision to move is affected by cultural barriers (such as language and customs) and by the social costs of leaving one's networks (family friends and colleagues) as well as being influenced by the life course stage a person occupies." In addition, labour markets are more highly regulated in Europe than in Canada (Harris and Schmitt, 2001, pp.39-40).

In spite of efforts to harmonize, social and health programs are not as integrated as in Canada. There is nothing as comprehensive and portable as the Canada/Quebec Pension Plan, Old Age Security and medicare and hospital insurance under the Canada Health Act. And the personal income tax is not integrated as under the Tax Collection Agreements. Consequently, barriers to labour mobility from government spending programs and taxation are probably much greater in Europe than in Canada.

Given that some prominent Canadians have claimed that barriers to labour mobility are greater in Canada than in Europe, perhaps it would be worthwhile to test the validity of this *prima facie* implausible view by carrying out a more detailed study comparing professional and occupational recognition and labour mobility in Canada and the EU.

Australia and New Zealand

Labour mobility for regulated professions and occupations in Australia is established by the Australian Mutual Recognition Act (1992), which also applies to goods as well as occupations. As it affects occupations, this act allows a person who is registered to practice an occupation in one Australian state and who moves to another state to practice an equivalent occupation.

The mutual recognition principle states that a person who is registered in one state for an occupation is entitled, after notifying the local registration authority of another state for the equivalent occupation, to be registered, and, pending the completion of the registration, to be allowed actually to work in the occupation. This means that the person's registration must be accepted without having to satisfy the requirements of the new jurisdiction with regard to qualifications and experience.

This principle does not apply when the state to which the person moves has a law that relates specifically to the manner of carrying on an occupation. An example of this exception to the MRA is the remote provision of a service where the service provider lives in another jurisdiction.

The mutual recognition act provides a review mechanism to appeal a decision made by a regulatory body. If a person's application for registration in an occupation in another state is refused, application may be made to the Administrative Appeals Tribunal for review of the decision.

More recently, the Australian Mutual Recognition Act served as the basis for the Trans-Tasman Mutual Recognition Agreement of 1997. The TTMRA was considered to be a logical extension of the 1983 Australia-New Zealand Closer Economic Relationship Trade Agreement.

The Australian Mutual Recognition Act and the Trans-Tasman Mutual Recognition Agreement provide for more automatic recognition of professional and occupational credentials than the AIT. Decisions of local registration authorities can be appealed to the Administrative Appeals Tribunal in Australia or the Trans-Tasman Occupational Tribunal in New Zealand, which was established as a result of the TTMRA. The two tribunals are required to cooperate and were required to enter into a memorandum of understanding to that effect.

Depending on the jurisdiction, one or the other of the two tribunals can make an order that an appellant is entitled to be registered or specify or describe necessary conditions for occupational equivalence. A tribunal can also decide to make a declaration that the two occupations are not equivalent only if the activities are not substantially the same or if registration could result in a threat to occupational health or safety or threaten significant environmental pollution. Declarations of non-equivalence stand for a period of twelve months during which time the declaration must be referred to the Ministerial Council in the relevant jurisdiction to determine whether agreed standards, including competency standards, should be applied to the occupation in question. Parties can also independently refer competency standards to the Ministerial Council for determination. Ministers from New Zealand and at least one participating Australian party can declare occupations equivalent in their jurisdictions.

In a comprehensive study of MRAs and the TTMRA, the Australian Productivity Commission (2003, p.40) found that "mutual recognition appears to be associated with a modest increase in interstate arrivals in registered occupations compared with the other occupations" While not exactly a ringing endorsement, this at least offers some encouragement that MRAs are working in Australia and New Zealand to facilitate labour mobility.

The system in Australia and New Zealand puts much more emphasis on requiring mutual recognition than the AIT does in Canada. It also has a dispute settlement mechanism that is much more open to persons encountering difficulties getting their professional qualifications recognized in other jurisdictions and that once invoked produces definitive results within a reasonable period of time.

COMPARISONS OF LABOUR MOBILITY IN CANADA AND OTHER COUNTRIES

Making reliable comparisons of barriers to labour mobility across countries or economic unions is very difficult. In addition, to the barriers in regulated professions and occupations in sub-national jurisdictions, there can be other barriers like social insurance, pensions, health insurance, language and culture that inhibit labour mobility (Gunderson, 1994). This makes it almost impossible to disentangle the impact of the various factors affecting labour mobility.

IMF Staff members Tamim Bayoumi, Bennett Sutton, and Andrew Swiston (2006) analyzed "the flexibility of the Canadian labour market across provinces in both an inter- and intra-national context using macroeconomic data on employment, unemployment, participation, and (for Canada) migration and real wages." Using a VAR model for a vector including changes in employment, employment rates and participation rates, they found that "Canadian labour markets respond "in a similar manner to their U.S. counterparts, and are more flexible than those in major European countries." This conclusion is based on the response of the model to an employment shock. In both Canada and the United States, the initial employment shock is followed by a further increase in employment as population expands, whereas in Europe (Spain, France and Germany being the specific countries considered) the initial employment increase is lost as population fails to expand (Bayoumi, Sutton, and Swiston. 2006, p.7).

Bayoumi, Sutton, and Swiston also analyzed the functioning of the labour market across different Canadian regions. Their conclusion was that labour markets in Canada were more flexible in the West and that migration played a larger role in labour market adjustment in the Western provinces than in the Atlantic. And that Ontario had a more flexible labour market than Quebec (Bayoumi, Sutton, and Swiston. 2006, p.7).

In a background study prepared for its 2005 Article IV consultations, the International Monetary Fund (IMF, 2005, pp.92-100) concluded that "Canada is characterized by a relatively high degree of flexibility, of a magnitude comparable if not larger than many other industrialized countries, with the likely exception of the United States." This conclusion was supported by a thorough analysis of different indicators of economic flexibility that included: the reallocation of production resources across sectors; rates of firm turnover, and of job creation and destruction across countries; and the estimated coefficients of Phillip's curve wage equations. It suggests that interprovincial barriers to labour mobility have not undermined the flexibility of Canadian labour markets.

BRIEF SURVEY OF THE RESEARCH ON INTERPROVINCIAL LABOUR MOBILITY AND THE ECONOMIC COST OF BARRIERS

Some Studies on Canadian Interprovincial Labour Mobility

There have been a few studies in recent years that have examined interprovincial labour mobility. While none of them specifically considered the impact of regulatory barriers such as licensing and certification on labour mobility, they are worth looking at for the light they shed on interprovincial labour mobility more generally.

The first study to be considered is by Zhengxi Lin (1995). He used data from the Labour Market Activity Survey for 1988-90 to explore interprovincial migration, and found that Unemployment Insurance and social assistance had no impact. Barriers resulting from professional and occupational regulations were not considered sufficiently important to warrant inclusion as separate variables in his study.

Ross Finnie (2000) of Statistics Canada estimated the probability of moving from one year to the next using panel logit models and data from the Longitudinal Administrative Database (LAD) covering the period 1982 to 1995. He made separate estimates for 8 age and sex groups. And he used environmental factors, personal characteristics, labour market attributes, and year variables as explanatory variables and succeeded in estimating the impacts of these various factors. From an economic point of view, the most interesting findings were that migration was positively, but weakly, related to earnings for prime age men and directly related to unemployment rates.

Another study that sheds more light on the economic impact of mobility is Finnie (2001). It investigated the effects of inter-provincial migration on individuals' earnings using the LAD. He found that inter-provincial mobility is associated with statistically significant and in many cases quantitatively substantial changes in individuals' earnings, with these effects varying by age, sex, and province of origin. He also analyzed pre- and post-move earnings profiles, which indicated that movers are quickly integrated into the destination labour markets.

Using data from successive waves of the Survey of Labour Income and Dynamics (SLID) over the 1993 to 1999 period, Rick Audus and James Ted McDonald (2003) estimate the determinants of geographic mobility focusing on the possible impact of the Employment Insurance (EI) Program. While they found no strong evidence of a direct relationship between EI and geographic mobility, they did find some evidence of an indirect relationship for certain workers with a weaker attachment to work. Barriers resulting from professional and occupational regulations also were not incorporated in the analysis.

Kathleen Day and Stanley Winer (2005) studied the determinants of interprovincial labour mobility over the 1974 to 1996 period using aggregate migration data constructed from personal income tax files. They concluded that its prime determinants were differences in earnings, employment prospects and moving costs and that the impact of public policies such as unemployment insurance, taxation, social assistance and federal and provincial spending was

small. The only policy changes that seemed to have a major impact on interprovincial labour mobility was the election of the PQ government in 1976 and the closing of the cod fishery in 1992. While the analysis only covered the first two years that the AIT was in effect, it is still interesting to note that no mention is made in the study of any impact of barriers resulting from provincial professional and occupational regulations.

Focusing more narrowly on its own area of responsibility, the Construction Sector Council (2005) commissioned Ray Pennings of WRF Services Inc. to carry out a study of worker mobility in the large industrial and civil engineering sections of the construction industry. The study involved two approaches: an on-site survey of workers by questionnaire; and focus groups on site to confirm the findings and elicit some revealing anecdotes. The survey yielded 875 completed questionnaires from three tar sands sites in Alberta and one power generation site in New Brunswick. It provided a profile of workers in the heavy construction industry and their motivations for moving to major work sites. It also provided information on barriers to labour mobility. The workers surveyed were from three groups: traditional building trades; an alternate Christian union; and non-union workers. The most important finding of this study for the issue at hand is that "no significant barriers to work resulting from certification, transferring pension and benefits, and the travel card were found" (Construction Sector Council, 2005,pp.7&14). This result should not be surprising given the success of the Red Seal program and the tightness of the Alberta labour market.

No empirical studies were found that demonstrate that professional and occupational regulations constitute a substantial barrier to labour mobility. This suggests that either the barriers are not that important in practice or that for some unexplainable reason they have been overlooked by researchers.

The Economic Cost of Barriers to Labour Mobility

A view that there are very large costs associated with non-recognition of credentials has gained a certain currency in political and business circles . This view was fueled by an oft-quoted Conference Board of Canada study entitled *The Brain Gain: The Economic Benefits of Recognizing Learning and Learning Credentials in Canada*. It estimated that the cost of not recognizing, mainly foreign, credentials was costing Canada's economy $5 billion a year. According to the study, more than 540,000 people would gain an average of $8,000 to $12,000 each year if their credentials were recognized. This gap was estimated econometrically based on the earnings of Canadians with equivalent education. A problem with this methodology is that it assumes that the foreign and Canadian education are of equivalent value. This is an assumption that has been called into question by the results of the International Adult Literacy Survey (Bonikowska, Green and Riddell, 2006). For the most part, the differences in employment and income for those with foreign and with domestic credentials reflect the valuations of employers. Only a relatively small portion of those with foreign credentials are in professions where licensing and certification is a barrier.

Aside from the Conference Board study, which really did not address the issue of interprovincial barriers to labour mobility, only one study was found that attempted to quantify

the economic costs of these barriers. It was that done by Sunder Magun, Laval Lavallée, Jean-Louis Arcand and François Ethier (1994) for Industry Canada. This paper, which predates the AIT and is now very dated, uses two different, and very complicated, approaches and data sets to estimate the gains and losses in economic welfare that would result from removing interprovincial labour mobility barriers. While it is not useful to spend a lot of time on a detailed discussion of methodology, it is helpful to describe briefly the two approaches. The first is based on the assumption of wage convergence after the removal of barriers. The second estimates an employment probability model and uses it to simulate the effect of eliminating barriers on individuals' probability of employment. The estimated Canada-wide effects using both approaches on employment and output are so small as to be negligible (even though the provincial effects are more significant). This reflects the small number of workers affected by the barriers even before the AIT came into effect. However, as both approaches yield Canada-wide declines in output and employment, except when using the wage convergence approach and assuming a productivity increase, the estimates are counter intuitive. They, in effect, show a net, albeit insignificant, benefit from retaining the barriers.

In contrast, a more traditional, and less complicated, cost-benefit analysis based on the assumption of full employment would estimate the increase in Canada-wide output and wages by tallying the differences in the marginal productivity of labour and the wage rate between the migrants' origin and destination provinces for all the workers that move. Such an analysis would reveal a net benefit to be gained from eliminating the barriers as long as the wages and productivity are higher in the destination provinces and workers move. However, the net benefit would still be very small because of the number of workers moving affected by occupational barriers is very small. As noted above, those who were refused licensure, registration, or certification, according to the FLMM survey, only represented 1.7 per cent of interprovincial migrants or less than 0.03 per cent of the labour force. With such a minuscule number of workers affected and with the potential wage increase only being a fraction of the overall wage, it should not be surprising that any credible estimates of the economic cost of barriers to labour mobility are likely to be minuscule.

It should not be necessary to produce exaggerated estimates of the costs of labour mobility barriers to justify their removal. The mobility rights conferred on individuals under section 6 of the Charter of Rights and Freedoms should be sufficient justification for eliminating the remaining barriers to labour mobility in Canada.

CONCEPTUAL, METHODOLOGICAL AND DATA ISSUES

The issues are straightforward. There are people who want to move to pursue economic opportunities. Most are able to do so, but are hampered by interprovincial barriers. Questions pertain to: the number of people that move or want to move; the impact of the move on their labour market performance and income; the number who face barriers; and the number who overcome barriers.

There are several data sources that to a greater or lesser extent can be used to shed light

on these issues. The most promising include; the Census; the Longitudinal Administrative Database; the EI File; the Survey of Labour and Income Dynamics; special one-off surveys.

The Census provides the most comprehensive information on Canadians. This makes it useful for providing information on the numbers and locations of those in particular trades or occupations and their earnings. It can be used to analyze the earnings gaps for occupations in different jurisdictions and to identify occupations where regulatory barriers may be significant. But the fact that it is only available at five year intervals and is not longitudinal makes it less useful for tracking interprovincial labour mobility and related analysis.

The LAD is a 20 per cent longitudinal file constructed from the T1 tax returns filed annually by Canadian taxpayers. Its advantage is its large size, longitudinal nature, annual frequency, and comprehensive coverage of earnings. Its disadvantages are its rudimentary place identification, lack of information on specific jobs, relative lack of occupational identifiers as well as its confidential nature. Statistics Canada staff is very experienced in using this file and has used in the past for studies of labour mobility.

The EI file has information from the Record of Employment that make it more useful in tracking labour mobility and earnings in different jobs. A major drawback of the EI file is its complexity and confidential nature.

The Survey of Labour and Income Dynamics SLID is a household survey that provides national data on the fluctuations in income that a typical family or individual experiences over time and that includes data collected by the Labour Force Survey (LFS). The SLID sample is composed of two panels, which each consist of two LFS rotation groups and include roughly 15,000 households. The panels are surveyed for six consecutive years with a new overlapping panel introduced every three years. The SLID has been used to analyze interprovincial labour mobility. Its advantage is its longitudinal nature and its combination of labour market and income variables. Its disadvantage is the small size of the sample for examining the interprovincial mobility in regulated occupations.

While no data source is perfect for the task, the Census, the LAD, the EI file, the SLID all can be used by skilled researchers to shed light on the issue of the impact of barriers to labour mobility.

Special surveys can also be used to supplement existing data sources. An example is the 2004/05 survey of labour mobility in Canada that was discussed above (FLMM, 2004). It was directed at regulatory authorities and provided invaluable information on the functioning of the mutual recognition approach under Chapter 7 of the AIT. To be really useful, it needs to be continued and refined.

A survey could also be done of those individuals who apply for licensure, registration or certification as well as the regulatory bodies. This could provide longitudinal follow-up information on the consequence of being refused or approved. This could include, for instance, whether rejected applicants were eventually approved, and the impact of moves on earnings for

individuals whose applications were approved.

KEY KNOWLEDGE GAPS AND FUTURE RESEARCH PRIORITIES

The most important knowledge gaps concern the extent of the regulatory barriers to labour mobility and their impacts and costs. Information on the occupational requirements needs to be collected and analyzed. The Work Destinations Website represents a start, but it is still far from a complete inventory.

There is also not a very good appreciation of the relative magnitude of the barriers associated with the occupational requirements for the different professions and trades. One possibility would be to take the information once collected and quantify it using a methodology like that employed by Copenhagen Economics (2005) in preparing a quantitative assessment of the European internal market for services (see Macmillan and Grady, 2007, p17-18 for summary of methodology).

There is also relatively little longitudinal information on those in the regulated professions who either move or contemplate moving. Special survey designed to elicit such information need to be developed.

There is also not a full understanding of the impact of labour mobility on earnings. It is important to explore what can be done using the existing data, including the Census, the LAD, and the SLID from Statistics Canada, and the EI file. Statistics Canada research staff, who are most familiar with these data sources, should be consulted in determining the most promising future research strategies.

Because of the small numbers of mobile individuals involved in the regulated occupations and professions and the lack of hard information on them, attempts to identify the costs of interprovincial labour mobilty barriers using macroeconometric or GE Models are unlikely to be very fruitful.

SOME CONCLUDING THOUGHTS ON PUBLIC POLICY OPTIONS

There is nothing fundamentally wrong with the approach of mutual recognition being pursued in Canada to eliminate regulatory barriers to labour mobility. Indeed it is the only one that is truly compatible with the distribution of powers in Canada's Constitution. It is also the approach that has been favoured in other federal or confederal jurisdictions.

There has also been a fair degree of success in Canada in achieving MRAs. However, the slow speed of the progress and lack of urgency has been disappointing. To a large extent, this is the result of the independence of the provincial and territorial regulatory authorities and the lack of political commitment from provincial and territorial governments to bring their regulatory authorities in line.

The renewed commitment to improve internal trade from the COF and the example of the TILMA are encouraging. It will be important to make sure that the commitment results in the needed action and that the CIT's new deadline of April 1, 2009 for all existing regulated occupations to establish compliance with the labour mobility provisions of the Agreement on Internal Trade is met. Governments will have to get tough with some of their independent regulatory agencies who have been allowed to get away with dragging their feet for too long. The Ontario Fair Access to Regulated Professions Act, 2006 provides an example of such an approach. It establishes a Fairness Commissioner to assess and oversee auditing and compliance with the legislation and with the power to issue compliance orders to regulatory bodies. Failure to comply with one of these orders could be punished by fines of up to $50,000 for an individual and up to $100,000 for a corporation.

The biggest disappointment of all with respect to Chapter 7 has to be the functioning of the dispute resolution mechanism. It is overly complex and inaccessible. And worst of all it is ineffective. After the long drawn out and still largely unresolved outcome of the two public accounting cases, the AIT dispute settlement mechanism must be considered a costly waste of time for anyone seeking redress with respect to a labour mobility measure. In contrast, the TILMA has provided an example of a simpler, binding system. The CIT was correct to agree that "an effective, fair, efficient, accountable and enforceable administrative dispute mechanism" should be implemented by September 2007. This would go a long way towards making the AIT work better and ending the deep-rooted, but erroneous, perception that regulatory barriers to labour mobility are severely undermining the Canadian economic union.

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